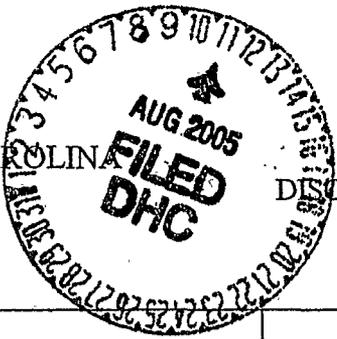


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STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 17

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
RODNEY S. TOTH, Attorney,
Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, and members M. Ann Reed and H. Dale Almond pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by Jennifer A. Porter. The Defendant was represented by Alan M. Schneider. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following:

Findings of Fact

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, Rodney S. Toth (hereafter "Defendant"), was admitted to the North Carolina State Bar on August 19, 1978 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant to the second claim for relief in this complaint, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Charlotte, Mecklenburg County, North Carolina.
4. From January 1, 1998 through October 18, 2000 Defendant represented clients on matters relating to real estate closings and personal injury claims. In the course

of representing these clients Defendant received money on behalf of clients into his trust account, account number 1561046650 at Branch Banking & Trust Company (hereafter "BB&T trust account").

5. During this time, Defendant failed to disburse promptly to various third parties or entities all the funds he received on behalf of clients and was directed to disburse. Funds for at least five clients have still not been disbursed as of the date of this order.

6. The State Bar contacted Defendant in August 2000 and requested his records concerning his trust account.

7. Defendant did not maintain and did not produce to the State Bar the minimum records he was required to keep for his BB&T trust account, including:

- (a) all bank statements,
- (b) all canceled checks,
- (c) all bank receipts or deposit slips identifying the source, client, and date of receipt, and
- (d) ledgers for all trust funds received by him, with a current balance.

8. Defendant did not reconcile the trust account balances of all funds belonging to clients from at least January 1998 through October 2000.

9. The funds referred to in paragraph 5 above remained in Defendant's trust account at all times and were not misappropriated.

Conclusions Of Law

1. All parties are properly before the hearing committee and the committee has jurisdiction over the Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) as follows:

- (a) Defendant violated Revised Rule 1.3 by failing to act with reasonable diligence and promptness in representing clients by failing to disburse promptly all funds received on behalf of clients;
- (b) Defendant violated original Revised Rule 1.15-2(h)¹ and amended Revised Rule 1.15-2(m)² by failing to disburse promptly all funds received on behalf of clients;

¹ The original Rule 1.15-1 to 1.15-3 of the Revised Rules of Professional Conduct concerning trust accounts were adopted effective July 24, 1997 and remained in effect until May 4, 2000.

² The amended Rules 1.15 to 1.15-4 of the Revised Rules of Professional Conduct concerning trust accounts in effect at the time of Defendant's actions were adopted effective May 4, 2000.

(c) Defendant violated original Revised Rule 1.15-2(b) – (d) and amended Revised Rule 1.15-3(a) by failing to maintain for his client trust account complete records of all funds received and disbursed for the previous six years; and

(d) Defendant violated original Revised Rule 1.15-2(g) and amended Revised Rule 1.15-3(c) by failing to reconcile the trust account balances of funds belonging to all clients at least quarterly.

Findings of Fact Regarding Discipline

1. During the period of time in question, Defendant experienced some personal problems related to the extended illness and death of his mother, including the decision to remove his mother from life support, which problems resulted in his consumption of alcohol. These personal problems diverted his attention away from his law practice.

Based upon the foregoing findings of fact and conclusions of law and based upon the consent of the parties, the hearing committee enters the following:

Conclusions With Respect To Discipline

1. Defendant's misconduct is aggravated by the following factors:
 - a. Multiple offenses; and
 - b. Substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Personal or emotional problems; and
 - c. Absence of dishonest or selfish motive.
3. The mitigating factors outweigh the aggravating factors.
4. Defendant's conduct, if continued or tolerated by the Bar, poses a significant risk of potential harm to future clients.
5. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline and that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.
6. For these reasons, this DHC Committee finds that an Order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the hearing committee enters the following:

Order Of Discipline

1. The Defendant, Rodney S. Toth, is hereby suspended from the practice of law for 90 days, effective 30 days from service of this order upon Defendant.
2. The 90 day suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Completely abstain from the consumption and use of any alcoholic beverage of any type throughout the period of the stay;
 - b. Successfully comply with the monitoring requirements of the National Confederation of Professional Services or other service agreed to by the parties, at Defendant's expense. Such monitoring will include a drug screen and a breath test for alcohol each month. The monitoring agreement will require the monitoring service to report any failure of Defendant to take a test and any positive test result to the North Carolina State Bar, and Defendant will sign any necessary releases or documents to allow such reporting. Failure to enter into a monitoring relationship with the National Confederation of Professional Services or other service agreed to by the parties and consistent with this order within sixty (60) days of service of this order or a positive test result shall cause any stay of suspension to be immediately dissolved;
 - c. Defendant received a substance abuse assessment. Pursuant to this assessment, Defendant will: 1/ go to four AA meetings per week; 2/ have a sponsor, approved in advance by the Office of Counsel of the State Bar, and call or meet with this sponsor daily; and 3/ work all 12 steps of the AA program with this sponsor. Any expense will be borne Defendant;
 - d. Defendant will ensure that documentation of his compliance with the terms of subparagraph (c) above is provided to the Office of Counsel of the State Bar as follows: 1/ Defendant will report to his sponsor, in whatever form specified by his sponsor, details regarding Defendant's AA meeting attendance as required in this order, including but not limited to Defendant's arrival time at the meeting, his departure time, and a summary for each AA meeting, and shall provide his sponsor with a copy of any log sheets or other documentation requested by the sponsor showing meeting attendance; 2/ Defendant shall have his sponsor certify monthly the dates of Defendant's attendance of AA meetings for that month for the length of this stayed suspension, such certification to clearly indicate the name, position, and contact

information for the certifying individual, and send such certification to the Office of Counsel for the State Bar each month; and 3/ Defendant will have his sponsor send a report to the Office of Counsel each month certifying daily contacts with Defendant and reporting the actions taken in that month to satisfy the requirement that Defendant work all 12 steps of the AA program with the sponsor, such correspondence clearly indicating the name and contact information for the sponsor. These certifications and reports from the sponsor are due monthly, with the first report due on the sixtieth (60th) day after service of this order and by the twentieth (20th) day of each month thereafter. Any costs will be borne by Defendant;

- e. Sign appropriate documents allowing the above agencies, individuals and treatment providers to release confidential information to the Office of Counsel of the North Carolina State Bar. Defendant shall execute any additional releases as and when requested by the Office of Counsel of the North Carolina State Bar within ten (10) days from receipt of the request, and shall not revoke any such releases;
- f. During the period of the stay, Defendant will pay all State Bar Membership dues and Client Security Fund (CSF) assessments and will comply with all Continuing Legal Education (CLE) requirements on a timely basis, provided that if Defendant voluntarily transfers to inactive membership status during the period of the stay of this suspension, his obligations for payment of State Bar Membership dues, payment of CSF assessments, and CLE compliance shall be as specified in 27 N.C.A.C. 1A § .0203(c)(3) and 27 N.C.A.C. 1D §§ .1517 and .1518 or other applicable State Bar regulations for an individual in Defendant's resulting status;
- g. Provide the Office of Counsel of the North Carolina State Bar with a current working mailing address and, during the course of any stay of suspension under this order, keep his address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- h. Not violate any of the Revised Rules of Professional Conduct in effect during the period of the stay;
- i. Not violate any laws of the State of North Carolina or of the United States during the period of the stay;
- j. Pay all costs of this proceeding as assessed by the Secretary during the period of the stay; and
- k. Identify all identifiable funds remaining in his attorney trust account at Branch Banking & Trust Company (BB&T), account number

1561046650, and properly disburse all funds as identified and/or pursuant to proper escheat procedures in the trust account. Such funds shall be identified within 90 days of service of this order and such funds shall be disbursed and/or escheat procedure initiated within 120 days of service of this order. Defendant shall provide documentation showing the identification of the trust account funds per client to the Office of Counsel of the North Carolina State Bar on the 90th day following service of this order upon him and shall provide the Office of Counsel with documentation showing disbursement of the funds and/or initiation of escheat procedures on the 120th day following service of this order.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:

- a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- c. Complied with all Continuing Legal Education requirements as if still in practice during the suspension on a timely basis, provided that if Defendant voluntarily transfers to inactive membership status during the period of the stay of this suspension, his obligations for CLE compliance shall be as specified in 27 N.C.A.C. 1D §§ .1517 and .1518 or other applicable State Bar regulations for an individual in Defendant's resulting status;
- d. Not have violated any of the Revised Rules of Professional Conduct;
- e. Not have violated any laws of the State of North Carolina or of the United States;
- f. Paid all costs of this proceeding as assessed by the Secretary prior to submitting any petition for reinstatement;
- g. Show that he is not then suffering from any disability or addiction that would impair his ability to practice law; and
- h. Show that he has complied with all conditions of paragraphs 2(a) – (e) under the Order of Discipline section of this order and has abstained from all alcohol use or consumption for a period of at least one year preceding his petition for reinstatement as a condition of reinstatement as an attorney with the North Carolina State Bar, such abstention to be evidenced by successful compliance with the monitoring requirements of the National Confederation of Professional Services or other service

agreed to by the parties at Defendant's expense. Defendant must demonstrate that he has abstained from the use of alcohol for a period of at least one year immediately preceding his filing a petition for reinstatement regardless of when the stay is dissolved, and regardless of whether the provisions of this paragraph would result in his being unable to practice law for more than the period of time delineated herein for the suspension or the stay of the suspension.

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 9th day of August 2005.

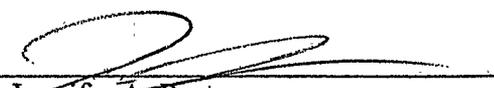


Stephen E. Culbreth, Chair
Disciplinary Hearing Committee

Agreed to and consented by:



Rodney S. Toth, Defendant

Alan M. Schneider
Attorney for Defendant

Jennifer A. Porter
Attorney for Plaintiff, N.C. State Bar